

As a technical proposition, handling charges represent a retailer's cost of doing business, and are consequently always included in gross charges subject to tax. See, 86 Ill. Adm. Code 130.410. (This is a GIL).

September 17, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated August 20, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

This is a request for clarification of the sales tax law on freight charges. Recently, we purchased some equipment from COMPANY which was shipped to us. The invoice was broken down in the following manner:

PC equipment	\$ 903.00
Software	160.00
Freight & Handling	<u>95.00</u>
Subtotal	\$1,158.00
Sales Tax (6.25%)	<u>72.38</u>
Total	<u>\$1,230.38</u>

Upon return of the equipment we were credited as follows:

PC Equipment Return	\$ 903.00
Less Return Freight & Handling	<u>-95.00</u>
Net	\$ 808.00
Software Return	<u>160.00</u>
Subtotal	\$ 968.00
Sales Tax (6.25%)	<u>60.50</u>
Total Credit	<u>\$1,028.50</u>

Per Title 86 Part 130 Section 130.415 paragraph d, it was my understanding that mail order delivery charges are nontaxable, especially in light of the fact that on the return we were essentially charged tax on the return freight. Upon questioning COMPANY and the Illinois Department of Revenue Office in Chicago, I was told that per that very same paragraph, charging sales tax on freight is allowed. Needless to say, I am confused and would very much like to understand this so as to avoid any problems in the future.

In light of that, the office in Chicago suggested I write your office to obtain more detailed information, which I am now requesting.

Thank you for your assistance in this matter.

As a technical proposition, handling charges represent a retailer's cost of doing business, and are consequently always included in gross charges subject to tax. See, 86 Ill. Adm. Code 130.410. However, such charges are often stated in combination with shipping charges. In this case, charges designated as "shipping and handling," as well as delivery or transportation charges in general, are not taxable if it can be shown that they are both separately contracted for and that such charges are actually reflective of the costs of shipping. To the extent that shipping and handling charges exceed the costs of shipping, the charges are subject to tax. As indicated above, charges termed "delivery" or "transportation" charges follow the same principle.

The best evidence that shipping and handling or delivery charges have been contracted for separately by purchasers and retailers are separate contracts for shipping and handling or delivery. However, documentation that demonstrates that purchasers had the option of taking delivery of the property, at the sellers' location for the agreed purchase price, plus an ascertained or ascertainable delivery charge, will suffice. If retailers charge customers shipping and handling or delivery charges that exceed the retailers' cost of providing the transportation or delivery, the excess amount is subject to tax.

Mail order delivery charges are deemed to be agreed upon separately from the selling price of the tangible personal property being sold so long as the mail order form requires a separate charge for delivery and so long as the charges designated as transportation or delivery or shipping and handling are actually reflective of the costs of such shipping, transportation or delivery. See subsection (d) of Section 130.415. If the retailer charges a customer shipping and handling or delivery charges that exceed the retailer's cost of providing the transportation or delivery, the excess amount is subject to tax.

If a taxpayer pays an amount of tax under the Retailers' Occupation Tax Act that is not due, either as a result of a mistake of fact or an error of law, the taxpayer may file a claim for credit with the Department. Only the persons remitting tax to the Department are authorized to file such claims. No credit shall be given the taxpayer unless the taxpayer shows that it has borne the burden of the tax or has unconditionally repaid the amount of the tax to the customer from whom it was collected. See the enclosed copy of 86 Ill. Adm. Code 130.1501. The statute of limitations for filing a claim for credit is 3 to 3 1/2 years and expires in 6 month blocks.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

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If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.